

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

RRev..No. 120 of 2007()

RCA.12/2005 of D.C. & SESSIONS COURT,KOLLAM
RCOP.23/1999 of PRL.M.C., KOLLAM
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REVN.PETITIONERS/ADDL. APPELLANTS 2 TO 5/LEGAL REP. OF
DECEASED FIRST COUNTER PETITIONER.

1. K.CHANDRAMATHI,
ANIL BHAVAN,NJARAKKAL CHERRY,THRIKADAVOOR VILLAGE.
2. ANIL KUMAR,
ANIL BHAVAN,NJARAKKAL CHERRY,THRIKADAVOOR VILLAGE.
3. ANITHA,
ANIL BHAVAN,NJARAKKAL CHERRY,THRIKADAVOOR VILLAGE.
4. AMBILI,
ANIL BHAVAN,NJARAKKAL CHERRY,THRIKADAVOOR VILLAGE.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SUJESHKUMAR

RESPONDENTS:

1. N.THANKAMMA,KOCHUKUZHIYATHU KIZHAKKE
PUTHEN VEEDU,MURUNTHAL CHERRY,THRIKKADAVOOR
VILLAGE.
2. B.SIVA PRASAD,KOCHUKUZHIYATHU KIZHAKKE
PUTHEN VEEDU,MURUNTHAL CHERRY,THRIKKADAVOOR
VILLAGE.

3. BALAKRISHNAN P,KAVARATHU VEEDU,
PANAYAM VADAKKE CHERRY,PANAYAM VILLAGE.
4. SASIDHARAN S,SREEDHARSANA,NEERAVIL
CHERRY,THRIKKADAVOOR VILLAGE.
5. SARASAMMA,WIFE OF RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
6. ANIL,SON OF RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
7. SUNI,SON OF RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
8. BABY,D/O.RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
9. RAMANI,D/O.RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
10. SINDHU,W/O.RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.
11. BINU,S/O.RAGHAVAN ACHARY,
APPAZHINJAZHIKKATHU VEEDU,NJARAKKAL CHERRY,
THRIKKADAVOOR VILLAGE.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 2/04/2007, THE COURT ON 12/4/2007 PASSED THE
FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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R.C.R.No.120 of 2007
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Dated this the 12th day of April, 2007.

JUDGMENT

Antony Dominic,J.

The legal representatives of the first respondent – tenant in R.C.P.No.23 of 1999 on the file of the Principal Rent Controller, Kollam, are the revision petitioners herein. In the Rent Control Petition that was filed by respondents 1 and 2 herein, the tenants were ordered to be evicted and the order of eviction was confirmed by the Rent Control Appellate Authority. Against the aforesaid concurrent orders of eviction, this revision petition has been filed under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. R.C.P.No.23 of 1999 was filed by respondents 1 and 2. The first respondent is the legal heir of deceased N.Bhaskaran and the second respondent is his power of attorney holder. First respondent had executed a rent deed on 7.3.1992 with respect to plaint A schedule shop room for a monthly rent of Rs.230/- and had established a printing press in the name and style "Sree Narayana Press". The tenants defaulted in the payment of rent from February,

1994 and late Bhaskaran sought his eviction by filing R.C.P.No.12 of 1995 under Section 11(2)(b) and Section 11(3) of the Act. The petition was allowed by the Rent Control Court and according to the present landlords, the ground under Section 11(3) of the Act had become infructuous on account of the death of Bhaskaran during the pendency of R.C.A. No.19 of 1998. Subsequently, this petition has been filed urging grounds under Section 11(2)(b) and Section 11(4) (iv) of the Act.

3. The first respondent resisted the petition seeking his eviction contending inter alia that the petition was bad for non-joinder of necessary parties, that the petition was filed during the pendency of R.C.A.No.19 of 1998, that the property was subjected to an agreement for sale to the Vyapari Vyavasayi Ekopana Samithy, Anchalummoodu for Rs.1,75,000/- and that late Bhaskaran had received Rs.12,000/- towards sale consideration in respect of which O.S.No.477 of 1994 was pending in the Civil Court. It was contended that the first respondent was ready and willing to pay the arrears of rent, if demanded by the legal heirs of the landlord and that it was not necessary for reconstructing the building. It was also pleaded that vacant rooms are not available in the locality.

4. Before the Rent Control Court, on behalf of the petitioners,

PWs 1 and 2 were examined and Exts.A1 to A19 were marked. On behalf of the respondents, RWs 1 to 9 were examined and Exts.B1 and B2 were marked. Mahazar and report prepared by the Commissioner were also marked in evidence as Exts.C1 and C2. It is also seen that the register maintained by the Accommodation Controller was marked in evidence as Ext.X1. After hearing the parties and in the light of the evidence available, the Rent Control Court by its order dated 8.1.2004, allowed the petition under Section 11(2)(b) and Section 11(4)(iv) of the Act and directed that the tenants shall surrender vacant possession of the building only the petitioners satisfying the Execution Court by producing approved plan and licence issued by the Local Authority.

5. Aggrieved by the order of the Rent Control Court, the revision petitioners, successors in interest of the deceased first respondent in the Rent Control Petition, filed R.C.A.No.12 of 2005. The said Rent Control Appeal was considered by the Appellate Authority and by judgment dated 26.2.2004, the appeal was dismissed upholding the order of eviction under Section 11(2)(b) and Section 11(4)(iv) of the Act and imposing an obligation on the landlord to produce the approved plan and licence, before the Execution Court. It was also ordered that the landlord was given a period of one year to reconstruct the building from the date of obtaining vacant possession of the rooms

from the tenants. It is aggrieved by the aforesaid concurrent orders of the Rent Control Court and the Appellate Authority, the petitioners have filed this revision petition.

6. We have heard counsel for the revision petitioners Sri.P.B.Suresh Kumar and Shri.K.Subashchandra Bose, who entered appearance on behalf of the landlord on caveat. The first submission made on behalf of the petitioners was that the Rent Control Court and the Appellate Authority have erred in ordering eviction under Section 11(4)(iv) of the Act in the absence of an approved plan and licence issued by the Local Authority. According to the counsel, the availability of approved plan and licence is a condition precedent in terms of Section 11(4)(iv) of the Act and as the Rent Control Court was not satisfied with the same, eviction ought not have been ordered. On the other hand, learned counsel for the caveator would submit that at the time when the petition was filed, there was no statutory requirement of getting a plan approved by the Local Authority or obtaining a licence for construction of a building. According to him, it was in the above circumstances that the same was ordered to be produced before the Execution Court before the actual eviction of the tenants.

7. Both the Rent Control Court and the Appellate Authority have

dealt with this aspect and entered concurrent findings against the petitioners. It is seen that though the availability of an approved plan and licence for construction of the building is a requirement under Section 11(4)(iv) of the Act, at the time when the Rent Control Petition was filed, the Kerala Buildings Rules were not applicable to the Thrikkadavoor Panchayat wherein the petition scheduled shop building is situated. The requirement of compliance with the Kerala Buildings Rules came as a consequence of the implementation of Section 235 F of the Kerala Panchayat Raj Act. Though the Act came into force in 1994, Section 235 A to Z came into force only from 1.1.2001. The Rent Control Petition having been instituted as early as in 1999, obviously, the compliance with the provisions of Section 235 A of the Panchayat Raj Act or of the Kerala Buildings Rules, were not a statutory requirement at that time.

8. This problem can be approached in yet another manner. If the requirement of the landlord for reconstruction of the building is assessed at the time of presentation of the petition, the fact that by a subsequent change, the requirements of the Building Rules have been implemented in the area, cannot defeat the petitioner because such requirement cannot have any retro activity. If that be so, the landlord could not have been called upon to satisfy the Execution Court as

ordered by the Rent Control Court or the Appellate Authority. It is taking into account the fact that the requirement of approved plan and licence has been implemented in the area only subsequently that the courts have adopted a via media in the matter by directing that the same be made available to the Execution Court. We do not find any irregularity in this approach nor do we see any prejudice caused to the petitioners also.

9. Since eviction is conditional on the satisfaction of the Execution Court, if the Execution Court is not satisfied with the availability of the approved plan and licence there is no question of the tenants eviction. If that be so, except the technical arguments raised by the counsel for the tenants, which is only to be stated and rejected, we find no substance in the complaint raised in this regard.

10. Another contention raised by the counsel for the petitioners was that although the petitioners are in possession of two rooms, only one room is included in Schedule A to the Rent Control Petition. Therefore, according to the counsel, even if eviction is ordered from the petition scheduled building, the landlord will not be in a position to reconstruct the building in as much as the tenants will still continue to be in possession of the other room. According to the tenants, there is no explanation from the landlord in this regard and therefore, the

order of eviction cannot be sustained.

11. On an anxious consideration of this contention, we notice that a plea in this regard has not been urged by the petitioners either in the Rent Control Court or in the Appellate Authority and therefore, we are not inclined to entertain this plea nor consider the same. Be that as it may, in order to satisfy ourselves about the genuineness of this plea, we perused the Rent Control Petition itself. On going through the Rent Control Petition, we notice that in paragraph 2 of the Rent Control Petition, it is stated thus: "The first opposite party is in possession and occupation of two shop rooms which is more specifically scheduled hereunder as A schedule." Similarly, the description of the property in the A schedule to the petition is as follows: "The shop room located at the northern end of line building and the varandha located behind it and the adjacent shop rooms situated within the above mentioned boundaries."

12. True that in A schedule to the petition, number of only one room is given in the description. While the other properties in plaint schedules B, C and D are single rooms and the description of A schedule includes two rooms. Thus, with sufficient clarity, the two rooms have been described in the R.C.P. as also in the schedule and therefore, we see no substance in the submission.

13. Yet another submission raised for the first time before us is that the landlord has described himself only as the legal heir of deceased Bhaskaran and that there is no plea that the first petitioner had succeeded to the estate of the deceased either by way of testamentary succession or intestate succession. According to the counsel, the petitioner may be legal heir, but that does not mean that he had succeeded to the estate and therefore in the absence of specific pleading in this regard, the petition ought not have been entertained. Here again, on going through the orders of the Rent Control Court and the Appellate Authority, we notice that a plea in this regard has not been raised either at the original stage or at the appellate stage. This being essentially a factual matter, it was up to the tenants to raise this plea and the power of attorney holder, who was examined in the case, could have been cross-examined in this respect. Having not done anything in this direction, we are not inclined to entertain this plea raised at this distance of time.

14. The other contention that was raised by the counsel appearing for the petitioner was that the building in question was the subject matter of a sale agreement with Vyapari Vyavasayi Ekopana Samithy and that O.S.No.477 of 1994 has already been filed by the Vyapari Vyavasayi, Anchalummoodu unit. According to the counsel,

since the suit is still pending there is no bonafides in seeking eviction of the tenants at this stage. Although pendency of the suit by itself can be no answer for the tenant to resist a petition under Section 11 (4)(iv) of the Act, it was submitted that the suit has been dismissed by the trial court but an appeal has been filed before this Court as A.S.No.537 of 2002 and that the appeal is pending. However, it has been pointed out by the counsel for the caveator that the respondent in the appeal expired on 3.10.2005 and thereafter, no steps have been taken by the appellants as a result of which the appeal stands abated. Although this was countered by the counsel for the appellants pointing out that an I.A. has been filed in this behalf, the fact remains that admittedly no orders have been passed by this Court in that I.A. Even otherwise, the litigation between the landlord and a stranger cannot be projected by a tenant to avoid his liability to be evicted, if on facts, ground available under Section 11 of the Act has infact been made out. It is a case where the ground under Section 11(4)(iv) of the Act has been made out and hence, we find no merit in the contention raised by the counsel for the revision petitioners. No other points have been urged.

We do not find any merit in the contentions urged by the counsel for the revision petitioner and the revision will stand dismissed. Ordered accordingly.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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After we pronounced the order, learned counsel for the revision petitioner sought for two months time to surrender vacant possession of the premises to the landlord. On hearing the counsel for the respondent/landlord, we are inclined to grant time as prayed for subject to the condition that the tenant shall file an affidavit in the Execution Court undertaking to vacate the premises on or before 13.6.2007, within a period of six weeks from today, that he shall continue to pay an amount equivalent to the rent as compensation for

use and occupation of the premises and that he shall undertake that he will not induct any third party to the petition schedule premises. He shall also pay arrears of rent, if any, within two weeks. If any one of these conditions is violated by the tenant, the landlord will be at liberty to move with the execution proceedings.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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